

Article 9 – Accessory Uses; Accessory Buildings and Structures; Encroachments; Temporary Uses; Home-Based Business Enterprises; Wireless Communication Facilities

25.09.01 – ~~Accessory Uses and Structures~~ General Requirements

~~General Requirements~~ Accessory uses and structures must:

1. Be customarily associated with and clearly incidental and subordinate to a legally established principal use or structure in accordance with all requirements of this Chapter;
2. Be operated and/or maintained under the same ownership as the principal use or structure;
3. Be on the same lot as the principal use or structure, unless otherwise provided in this chapter; and
4. Not create a nuisance or hazard to surrounding properties or passing vehicles or pedestrians; ~~and~~
5. ~~Not include residential occupancy or retail sales, unless specifically permitted.~~

25.09.02 – Accessory Uses

a. General Requirements – In addition to the general requirements for accessory uses in 25.09.01, above, accessory uses must:

1. Not include structures or structural features inconsistent with the permitted, conditional or special exception use;
 2. Not include residential occupancy or retail sales; and
 3. Not have a gross floor area in excess of the provisions for accessory buildings set forth below, if operated partially or entirely in detached structures.
- b. If operated partially or entirely within the structure containing the permitted, conditional, or special exception use, the gross floor area within such structure utilized by accessory uses (except garages and off-street loading facilities) is not greater than:
1. Twenty percent (20%) of the gross floor area, but not to exceed 300 square feet of the gross floor area of a dwelling unit; or

2. Ten percent (10%) of the gross floor area of a structure containing any permitted, conditional, or special exception use other than a dwelling unit.

25.09.03 – Accessory Buildings and Structures

a. *Residential Accessory Buildings and Structures*

1. Residential accessory buildings and structures are subject to the following ~~dimensional~~ development standards:

Dimensional Development Standards for Residential Accessory Buildings						
Zone	Minimum Setback Requirements				Rear Yard Coverage	Maximum Height Not to Exceed Feet
	Front	Side		Rear		
		Side - Street Abutting	Land Abutting			
R-400	All accessory buildings must be located in the rear yard except as provided in Sec. 25.09.05	30'	3'	3'	15%	15'
R-200		25'	3'	3'	25%	15'
R-150		30'	3'	3'	15%	15'
R-90		20'	3'	3'	25%	15'
R-75		20'	3'	3'	25%	15'
R-60		20'	3'	3'	25%	15'
R-60 (Qualifying Undersized Lot)		20'	3'	3'	25%	15'
R-40		20'	3'	3'	25%	15'

2. Residential accessory buildings and structures are subject to the following additional provisions:
 - (a) Accessory Buildings Greater than 12' High - Accessory buildings that exceed 12 feet in height must be set back from all lot lines an additional two (2) feet for each additional foot of building height up to the maximum allowable height of 15 feet.
 - (b) Gross Floor Area - The gross floor area of such detached accessory structures must not exceed ten percent (10%) of the minimum lot area in the R-40 and R-60 Zones. The gross floor area must not exceed nine percent (9%) of the minimum lot area in the R-75 Zone, and eight percent (8%) of the minimum lot area in the R-90 Zone. In no event can accessory structures occupy more than 25% of the rear yard.

- (c) Previously Built Accessory Structures - Accessory structures that were constructed under the standards in effect at the time they were erected are considered conforming and may be modified, repaired, or replaced so long as they conform to the previous development standards.
- (d) Historic Accessory Buildings - Historic accessory buildings, located in a legally designated Historic District Zone, are exempt from the calculation of rear yard coverage.
- (e) Accessory Buildings on Through Lots - A through lot has no rear yard as defined in this Chapter. However, accessory buildings may be placed in the apparent rear yard, but must be set back from the street line at least the minimum front yard setback required in the zone. Within the area between the main building and the setback line, all of the requirements for accessory buildings, including setbacks, heights, and maximum lot coverage will apply.
- (f) Accessory Buildings on Corner Lots – Accessory buildings may be placed in the rear yard of a corner lot. The rear yard of a corner lot must meet the rear yard setback.
- (g) Small, Open Accessory Structures - Small open structures, such as gazebos, may be permitted with a ten foot (10') set-back in a yard abutting a street.
- b. Non-Residential Accessory Buildings and Structures – Nonresidential accessory buildings and structures are reviewed as part of the site plan review and subject to all requirements of the relevant zone and all conditions of the site plan approval.

25.09.04 – Temporary Uses

- a. Permit Required – A temporary use permit must be issued prior to the use of a building, other structure, or land allowed by temporary ~~site plan~~ approval and demarked in the individual use charts of Articles 10 through 14. Temporary uses do not include uses that are regulated by Chapter 12, Licenses, Permits, and Miscellaneous Business Regulations, of this Code, such as hawkers and peddlers.
- b. Issuance – A temporary use permit may be issued if the Chief of Inspection Services or designee finds that the use proposed in the application will not:
 - 1. Adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use;
 - 2. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and/or

3. Constitute a violation of any provision of this Code or other applicable law.
- c. *Appeals* – The grant or denial of a temporary use permit may be appealed by an aggrieved party to the Planning Commission.
- d. *Special Requirements for Temporary Uses* – ~~*Special Requirements*~~ – The temporary uses described below are subject to the following requirements:
 1. *Temporary Buildings, Trailers, Portable Storage Units, or Yard for Construction Materials and Temporary Offices for the Sale or Rental of Real Property* – Temporary buildings, trailers, portable storage units, or yard for construction materials or equipment, both incidental and necessary to construction in the immediate area, and temporary offices incidental to and necessary for the sale or rental of real property in the immediate area may operate for as long as there is a valid building permit but must cease operation no later than the issuance of the last required occupancy permit. If such temporary uses are included in a valid building permit, no temporary use permit is required. Portable storage units may also be used on property improved with single unit detached, attached, or townhouse dwellings for the short-term storage of items, including but not limited to, clothing, equipment, goods, household or office fixtures or furnishings, materials, and merchandise, for a period not to exceed 30 days, which period may, for good cause shown, be extended for not more than an additional 60 days. A temporary use permit is not required for a portable storage unit used on residential property for moving or other short term purposes for 5 days or less.
 2. *Christmas Tree Sales* – Christmas tree sales are permitted only between the fourth Friday in November and December 25.
 3. *Garden Produce, House Plants, and Cut Flower Sales* – Sale of garden produce, house plants, and cut flowers may operate with a temporary use permit only during the months of May through October, and for not more than three (3) calendar months, which shall not be renewed for more than two (2) successive periods at the same location.
 4. *Carnivals, Festivals, Flea Markets* – Carnivals, ~~and~~ festivals, and flea markets must comply with the license provisions of Chapter 12, Licenses, Permits, and Miscellaneous Business Regulations, of the Code.
 5. *Mobile Uses* – Mobile uses which travel to residential or non-residential ~~districts~~ zones to provide services are subject to the Hawkers and Peddlers provisions set forth in Chapter 12, Licenses, Permits, and Miscellaneous Business Regulations, of the Code.

- e. *Validity Period of Approval* – The validity period of approval for each temporary use permit is set forth in subsection d. above.

25.09.05 – Setback Encroachments

The following setback encroachments apply within all zones, except as otherwise provided herein:

1. *Permanent Encroachments* – The following permanent structures and features are permitted to project into the required yard setbacks in the amount stated for each structure or feature:
 - (a) *Air Conditioners and Heat Pumps* – Air conditioners and heat pumps may project no more than five (5) feet into minimum side and rear setbacks.
 - (b) *Architectural Elements* – Cornices, eaves, and gutters may project not more than:
 - (i) Three (3) feet into front and side yard setback; and
 - (ii) Five (5) feet into rear yard setback.
 - (c) *Bay Windows, Vestibules, or Balconies* – Bay windows, vestibules, and balconies, ten feet (10') or less in width, may project not more than three feet (3') into front and rear yard setback.
 - (d) *Belt Courses, Sills, and Lintels* – Belt courses, sills, and lintels may project not more than six inches (6") into front, rear, and side yard setback.
 - (e) *Canopies* – Canopies may encroach into applicable setbacks in all zones except single unit detached dwelling, detached and semi-detached unit residential zones, subject to the following limitations:
 - (i) Nonpermanent canopies, not more than ten feet (10') wide, may encroach up to any front lot line; and
 - (ii) Permanent canopy structures, not more than 40 feet wide, may encroach up to 40 feet into front setback areas except where the front setback requirement is less than 50 feet, then such canopy may encroach up to ten feet (10') from any front lot line.
 - (f) *Chimneys* – Chimneys not more than six feet (6') in width may project not more than 18 inches into a front, side, or rear yard setback.

(g) *Porches, Steps, and Stoops in ~~Residential Low Density~~ Single Dwelling Unit Residential Zones* – Porches, steps, and stoops in Single Dwelling Unit Residential Zones are subject to the following limitations:

- (i) Uncovered steps, stoops, and porches may extend into the front or rear yard setback not more than 12 feet.
 - (ii) Covered steps, stoops, and porches may extend into the front yard setback not more than 12 feet.
 - (iii) Porches, steps, and stoops may extend not more than four feet (4') into the side yard setback if such steps, stoops, or porches are not more than eight feet (8') wide. Such entryways may be covered, but not enclosed.
- (h) *Setback From Unimproved Rights-of-Way* – If unimproved rights-of-way have remained unimproved for at least 20 years following the date of recordation of the plat or deed, and not programmed for improvement in the current City Capital Improvements Program, the following regulations apply:
- (i) *Setbacks for Buildings* – If the unimproved right-of-way abuts one (1) side of a lot, then the side yard setback requirement in the zone applies in lieu of the front yard setback requirement. If the unimproved right-of-~~work~~ way is approximately parallel to the improved street providing the primary access to the main dwelling, then the setback from the unimproved right-of-way is equivalent to the rear yard setback in the applicable zone in lieu of the front yard setback requirement.
 - (ii) *Setbacks for Accessory Buildings and Structures* – The setback requirements for accessory buildings and structures for side and rear lot lines are set forth in Section 25.09.03.

2. *Fences; ~~Walls~~, and Hedges*

- (a) *Fences; ~~Walls~~, and Hedges – Residential Zones* – Fences and hedges are subject to the following limitations in residential zones:
- (i) *Dangerous Fences Prohibited* - Fences and hedges on residential properties must comply with the provisions of Chapter 5, Buildings and Building Regulations of this Code regarding fences.
 - (ii) *~~Dimensional~~ Development Standards*

- A. *Side and Rear Yards* – A fence or ~~wall~~ hedge not exceeding eight feet (8') in height is permitted in the side or rear yard of any lot.
- B. *Front Yard* – A fence or ~~wall~~ hedge not exceeding 48 inches in height is permitted in the front yard.

(iii) *Corner and Through Lots*

- A. On a corner lot or through lot, the yards lying between the principal building and the streets are deemed front yards, and no fence or ~~wall~~ hedge exceeding 48 inches in height can be erected in this area.
- B. Notwithstanding Section ~~b.1.(b)(ii)~~, 2.(a)(ii)B., above, where the street abutting is classified as an arterial highway or greater, a fence or ~~wall~~ hedge not exceeding six feet (6') in height is permitted in the front yard.
- C. On a corner lot in a residential zone, a fence or ~~wall~~ hedge must not exceed 48 inches above the curb level for a distance of 25 feet from the intersection of the street lines. Retaining walls made necessary by changes in street grade, width, or alignment are not subject to the limitations set forth in the preceding sentence.

(iv) *Fences Adjacent to Unimproved Right-of-Way* – Fences or hedges along the unimproved right-of-way must not exceed six feet (6') in height and otherwise comply with the provisions for fences and hedges as set forth in Article 9. If the right-of-way is subsequently improved, any fence or hedge exceeding four feet (4') in height is deemed nonconforming and may be maintained and repaired. If replaced, the fence or hedge must comply with the provisions of this Section.

(b) *Fences and ~~Wall~~ Hedge – Nonresidential Zones*

- (i) *Dangerous Fences Prohibited* – Fences on nonresidential properties must comply with the provisions of Chapter 5, Buildings and Building Regulations, of this Code regarding fences.
- (ii) *~~Dimensional~~ Development Standards*
 - A. A fence or ~~wall~~ hedge not exceeding eight feet (8') in height is permitted in the side or rear yard of any lot.
 - B. The Planning Commission may allow a fence or hedge up to eight feet (8') in height in the front yard within an industrial zone in the

course of site plan review in accordance with the provisions of Article 7.

3. *Temporary Encroachments* – Structures and structural features to assist persons with disabilities to meet the provisions of the Americans with Disabilities Act (ADA) are permitted to project into the required yard setbacks for each structure or feature. This encroachment is permitted only so long as it is needed to accommodate a person with disabilities and the right to such encroachment does not run with the land.
4. Encroachments into setbacks that otherwise meet the standards as set out in this section 25.09.05 must be designed not to interfere with pedestrian or bicycle access or flow, or be a danger to pedestrians or bicyclists if a bicycle facility is accessible nearby, or if access to a bikeway is not contra-indicated.

25.09.06 – Height Encroachments

- a. *Height Exemptions* - The following non-habitable, architectural elements of a structure may exceed the height limitations prescribed for the zone in which the structure is located, subject to the restrictions of subsection b. below:
 1. Rooftop structures;
 2. Parapet walls;
 3. Belfries;
 4. Chimneys;
 5. Flagpoles;
 6. Flues;
 7. Monuments;
 8. Radio and television towers (subject to the wireless provisions contained in Section 25.09.08.b);
 9. Antennae or aerials (subject to the wireless provision contained in Section 25.09.08.b);
 10. Spires;
 11. Water towers and tanks;

12. Heating, ventilation units, air conditioning units (HVAC), and similar mechanical equipment; ~~and~~
 13. Solar heating panels, solar collectors, or other alternative energy generator equipment; and
 14. Elevator equipment and other mechanical equipment.
- b. Restrictions - The height exemptions provided in Section 25.09.06.a above, are subject to the following restrictions:
1. Architectural elements exempted from the height computation:
 - (a) Must have a total area less than 25% of the roof area;
 - (b) Must only be used for a use incidental to the main use of the building;
 - (c) Must be less than 19 feet in height as measured from the finished roof elevation; and
 - (d) Must be setback from the edge of the roof by a minimum of a 1:1 setback to height ratio.
 2. Notwithstanding the forgoing, parapet walls must not exceed six feet (6') in height as measured from the finished roof elevation.
 3. Rooftop mechanical equipment must be screened from view by an enclosure no taller than 19 feet in height as measured from the finished roof elevation.
 - (a) Rooftop mechanical equipment and their enclosures must be set back from the edge of the roof by a minimum of a 1:1 setback to height ratio.
 - (b) Rooftop enclosures must be designed to be compatible using, as closely as possible, the materials, color and style of the building. The Chief of Planning or designee must determine the degree to which the proposed enclosure adheres to the overall design character of the entire building.
- c. Waiver
1. The Planning Commission may permit a waiver from any or all of the restrictions set forth in subsections b.1 through b.3 upon finding that the size, scale, and dimensions of any non-habitable architectural structure listed above are:
 - (a) Architecturally compatible with both the building on which it is to be erected and the adjacent buildings; and

- (b) Not contrary to the intent and purpose of the Plan or this Chapter.
- 2. In granting any such waiver, the Planning Commission may impose such conditions as may be reasonable and necessary so that the non-habitable architectural structures are consistent with the Plan, including, but not limited to, the screening of rooftop structures and the shadow regulations set forth in Section 25.17.06.

25.09.07 – Home-Based Business Enterprise

- a. *General Provisions* – The following requirements apply to all types of home-based business enterprises:
 - 1. *Area of Use* – The home-based business enterprise must be conducted entirely within the dwelling unit or an existing accessory building and must not use any open yard area of the lot or parcel on which the dwelling unit is located or any building constructed on the lot or parcel specifically for the purpose of operating the home occupation. It may, however, involve off-site activities such as sales, client contact, and other matters related to the home-based business enterprise.
 - ~~2. *Log of Visits* – Each home based business enterprise must maintain a log of all visits made to the home in connection with the use; this log must be made available to the Chief of Planning on request.~~
 - 2. *Prohibition of Nuisance* – A home-based business enterprise must not:
 - (a) Use any equipment or process that creates a nuisance such as noise (in accordance with Chapter 31B of the Montgomery County Code, as amended), vibration, glare, fumes, odors, or electrical or electronic interference detectable at or beyond the lot line of a detached dwelling unit or the floor, ceiling, or party wall of an attached dwelling unit; or
 - (b) Involve the use, storage, or disposal of any hazardous material, except for disposal of medical waste regulated by Maryland State laws and regulations.
 - 3. *Prohibition of Truck Deliveries* – No truck deliveries are permitted, except for parcels delivered by public or private parcel services that customarily make residential deliveries.
 - 4. *Subordinate and Incidental Use* - The use must be subordinate and incidental to the main dwelling and the use of that dwelling for residential purposes and cannot occupy more than 49% of the gross floor area of the main dwelling.

~~but shall not be~~ A home-based business enterprise is not deemed to be an accessory use.

5. *Exterior Appearance* – If an accessory building to a principle building is used for any part of the home-based business enterprise, there must be no external evidence of such use and no external modifications that detract from the residential appearance of the dwelling unit. The floor area of an accessory building used in connection with the home-based business enterprise ~~must be~~ is not included in the total floor area allowed for the use in the principal building
 6. *Signs* – The display of a sign must comply with the requirements established in Article 18 of this Chapter.
 7. *Variance Prohibition* - No variance may be granted to accommodate a home-based enterprise.
 8. *Other Licensing* – The use must meet all other licensing requirements that may apply.
- b. *No-Impact Home-Based Business Enterprises* – No-impact home-based business enterprises are subject to the following provisions:
1. *Visits to the Site* - No more than ten (10) visits per week to the site are allowed in connection with the home-based business enterprise.
 2. *Employees* - The no-impact home-based business enterprise must be conducted only by individuals residing in the dwelling unit.
 3. *Sale of Goods* – No sale of goods other than those produced on the premises is allowed.
 4. *Display or Storage of Goods* – Display or storage of goods is limited to merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery.
 5. *Equipment or Facilities* – No equipment or facilities may be used in connection with the home-based enterprise other than:
 - (a) Domestic or household equipment;
 - (b) Small office equipment;
 - (c) Equipment or facilities reasonably related to the production of handmade products or services provided by the home-based business enterprise; and

(d) Equipment and supplies associated with personal or professional services.

c. *Minor Home-Based Business Enterprises* – Minor home-based business enterprises are subject to the following provisions:

1. *Registration* – A minor impact home-based business enterprise must be registered with the Chief of Planning.
2. *Application* – The applicant must submit an application which includes the following information:
 - (a) The manner in which the operation of the home-based business enterprise complies with the requirements of a minor home-based business enterprise;
 - (b) The location of the property by street address and either lot and block number or liber and folio;
 - (c) The zone in which the property is located;
 - (d) The location and number of off-street parking spaces;
 - (e) The hours of operation; and
 - (f) Other pertinent information required by the Chief of Planning.
3. *Affidavit* - The applicant must submit a signed affidavit affirming that:
 - (a) The applicant resides at least 220 days in each calendar year in the dwelling unit in question;
 - (b) The applicant agrees to comply with the requirements of this Section 25.09.07; and
 - (c) The applicant agrees to take whatever action is required by the Chief of Planning to bring the home-based business enterprise into compliance if complaints of noncompliance are received and verified.
4. *Approval of Application* – If the Chief of Planning determines that the completed affidavit and certification complies with the applicable Sections of this Chapter, the Chief of Planning will:
 - (a) Issue a Certificate of Registration; and
 - (b) Record the certificate in the home-based business enterprise Registry.

5. *Limitation on Number of Occupations* – ~~A maximum of two (2) minor home-based business enterprises are allowed in association with any one (1) dwelling unit.~~ If more than one (1) home-based business enterprise is operated in the dwelling, the cumulative impact cannot be any more than if only a single home-based business enterprise were operated in the dwelling.
6. *Employees* – The minor home-based business enterprise must be conducted only by individuals residing in the dwelling unit.
7. *Visits to Site*
 - (a) A maximum of 20 visits per week, and no more than five (5) visits per day including deliveries, is allowed in connection with minor home-based business enterprises on one (1) lot or parcel.
 - (b) Only one (1) motor vehicle of a patron, client, or any other non-resident visiting a minor home-based business enterprise may be parked at one (1) time on a lot or parcel where a minor home-based business enterprise is conducted.
8. *Sale of Goods* – No sale of goods other than those produced on the premises is allowed.
9. *Display or Storage of Goods* – Display or storage of goods is limited to merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery.
10. *Equipment or Facilities* – No equipment or facilities may be used in connection with the home-based enterprise other than:
 - (a) Domestic or household equipment;
 - (b) ~~Small office equipment, such as a typewriter, word processor, calculator, or computer; and~~
 - (c) ~~Equipment or facilities may be used other than what is~~ Other equipment facilities that are reasonably related to the production of handmade products or services provided by the home-based business enterprise; and
 - (d) Equipment and supplies associated with personal or professional services.
11. *Neighborhood Impact* – A minor home-based business enterprise must have no ~~discernable~~ significant impact on the surrounding neighborhood and must be subordinate to the residential use of the dwelling unit in which it occurs.

d. *Major Home-Based Business Enterprises* – Home-based business enterprises that do not satisfy the requirements of a no-impact or minor home-based business enterprise are deemed to be major home-based business enterprises and are permitted as special exception uses if they satisfy all of the applicable requirements of Article 15 of this Chapter.

~~c. *Major Home-Based Business Enterprises* – Major home-based business enterprises are subject to the following provisions:~~

~~1. *Special Exception Approval* – All major home-based business enterprises are special exceptions subject to the applicable review provisions of Article 15 of this Chapter. For major home-based business enterprises, the special exception is granted only to the applicant and is not transferable.~~

~~2. *Application Procedures* – As part of the special exception application, the applicant must provide all of information required to be provided for a minor home-based business enterprise as set forth in subsection b.2 and 3 above, plus such additional information required for special exceptions.~~

~~3. *Employees* – A major home-based business enterprise must be conducted by an individual residing in the dwelling unit, and may employ no more than two (2) nonresident assistants or business associates who are required to be at the dwelling unit for any length of time during the 24-hour day. The arrival and departure of the nonresident assistant or associate are not included in the limitations or visits to the site.~~

~~4. *Visits to the Site*~~

~~(a) The maximum number of visits to and from the site, including deliveries, will be as set by the Board of Appeals.~~

~~(b) Visits are prohibited between the hours of 10 pm and 7am, except in cases of medical emergency.~~

~~5. *Sale and Production of Goods and Services* – The following activities are permitted in a major home-based business enterprise:~~

~~(a) The sale of goods, excluding hazardous items;~~

~~(b) The production of handmade products; and/or~~

~~(c) Services including but not limited to tailoring, massage, cosmetology, tutoring, music lessons, and professional services which are provided on site by a resident of the dwelling.~~

~~6. *Display/Storage of Goods*—Display or storage of goods will be as set forth by the Board of Appeals.~~

~~7. *Equipment or Facilities*—No equipment or facilities may be used other than what is reasonably related to the production of handmade products or services provided by the home-based business enterprise.~~

e. *Inspections*

1. All home-based business enterprises ~~must be readily available for~~ are subject to inspection by the Chief of Planning during business hours.
2. A major home-based business enterprise requires an inspection of the site prior to the approval of the special exception. ~~A minor home-based business enterprise may begin operation without an on-site inspection.~~
3. If the Chief of Planning receives a complaint of a possible violation of a registered home-based business enterprise or otherwise has reason to believe there is a violation, an inspector from the City must inspect the property and determine, within 90 days after receipt of the complaint, whether there is a violation of the provisions of this Section, or of any condition of special exception approval.
4. If the Chief of Planning determines that there is no violation, the operator of the home-based business enterprise and the complainant must be so notified in writing.
5. If the Chief of Planning is denied access to the site to conduct the inspection such denial is a violation of this Article and ~~shall be deemed the City may seek judicial authorization to conduct the inspection to be an admission that the home-based business enterprise is in violation of the provisions of this Section.~~
6. If the Chief of Planning determines there is a violation of Section, 25.15.02.h, enforcement measures may be initiated in accordance with Article 19 of this Chapter.

f. *Maintaining the Home-Based Business Enterprise Registry*

1. It is the responsibility of the Chief of Planning to maintain the home-based business enterprise registry.
2. The home-based business enterprise registry must be readily available for public inspection.

- g. *Existing Home Occupations* - A home-based business enterprise in existence as of [date of adoption] is considered a conforming use if it complies with the provisions of the Zoning Ordinance for a home occupation in effect immediately prior to [date of adoption].
 - 1. If there is any change in the character of the existing home-based business enterprise, all applicable provisions of this Section 25.09.07 will apply.
 - 2. At such time as the home occupation ceases to operate for one year, or if the ownership of the property changes, all applicable provisions of this Section 25.09.07 will apply.

25.09.08 – Wireless Communication Facility

- a. *Purpose* – The purpose of this Section is to provide a uniform and comprehensive set of standards for the development and installation of wireless communication facilities, related structures, and equipment.
 - 1. The regulations and requirements contained herein are intended to:
 - (a) Regulate the placement, construction, and modification of wireless communication facilities in order to protect the health, safety, and welfare of the public and the aesthetic quality of the City; and
 - (b) Encourage managed development of wireless communication infrastructure, while at the same time not unreasonably interfering with the development of the competitive wireless communication marketplace in the City.
 - 2. This section is intended to promote the following objectives:
 - (a) To minimize the total number of wireless communication facilities and antenna support structures throughout the community through siting standards;
 - (b) To provide for the appropriate location and development of wireless communication facilities and related structures and equipment within the City, and, to the extent possible, minimize potential adverse impacts on the community;
 - (c) To minimize adverse visual impacts of wireless communication facilities and related structures and equipment through careful design, siting, landscape screening, and innovative camouflaging techniques, such as stealth technology, and utilizing current and future technologies;

- (d) To promote and encourage shared use/collocation of antenna support structures;
 - (e) To maintain and preserve the existing residential character of the City and its neighborhoods and promote the creation of a convenient, attractive, and harmonious community;
 - (f) To promote the safety of citizens and avoid the risk of damage to adjacent properties by ensuring that wireless communication facilities and related structures and equipment are properly designed, constructed, located, modified, maintained, and removed;
 - (g) To ensure that wireless communication facilities and related structures and equipment are compatible with surrounding land uses;
 - (h) To encourage: the location of antennas on existing buildings or other structures; collocation of new antennas on existing antenna support structures; camouflaged antenna support structures; and construction of antenna support structures with the ability to locate three (3) or more providers or users; and
 - (i) To maintain and ensure that a non-discriminatory, competitive, and broad range of high quality wireless communication services and high quality wireless communication infrastructure consistent with laws are available to the community.
- b. *Wireless Communication Facilities Attached to Existing Structures* – Wireless communication facilities attached to the roof or side of a building, or attached to an existing structure must comply with the following:
1. The building or other structure on which a wireless communication facility ~~will~~ to be installed must be at least 35 feet in height if used for nonresidential purposes and 50 feet in height if used for multiple ~~dwelling~~ unit dwelling purposes. In a mixed-use development, the multiple unit dwelling standard applies. Except as provided in Section 25.09.08.e, wireless communication facilities are not permitted on any single unit ~~residential~~ detached dwelling or appurtenant accessory building or structure.
 2. The antennas and antenna support structures must be located and designed to minimize visual impacts through various methods, including, but not limited to, the use of stealth technology. Antennas and antenna support structures must be installed according to the order of preference in subsections 25.09.08b.2.(a) through (d) below, with (a) being the preferred option. Use of a lower preference location is permitted only if an applicant provides detailed justification as to why higher preference locations are not suitable.

- (a) Antennas must be flush mounted on existing structures, or on either rooftop enclosures or the side of a building, and closely match the color and architectural treatment of the structure, enclosure, or building.
 - (b) Antennas must be flush-mounted on expanded rooftop mechanical equipment enclosures, with the enclosures and antennas designed to be consistent with the architectural treatment and color of the building.
 - (c) Antennas must be enclosed with screening that is consistent with the architectural treatment and color of the building or structure.
 - (d) Antennas and support structures must be painted or otherwise treated to minimize their visibility.
- 3. Antennas and supporting structures are permitted to exceed the height of the building or structure to which they are attached by a maximum of 19 feet. The height above a building must be measured from the finished roof elevation, and not from the roof of any equipment enclosure.
- 4. Antennas must comply with the following size standards:
 - (a) Whip antennas must be no more than seven inches (7") in diameter; and
 - (b) Panel antennas must be no more than two feet (2') wide and six feet (6') long.
- 5. An equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy, in the aggregate, more than 25% of the roof area.
- 6. When an antenna is located on a stadium light or utility pole, the total height of the antenna plus the pole or light must not exceed 125% of the average height of the lighting system at the stadium or run of poles within 500 feet of the pole on which the antenna is located.
- c. *Wireless Communication Facilities Located on Ground-Mounted Antenna Support Structures*
 - 1. *Scope* – This subsection applies to wireless communication facilities mounted on free-standing antenna structures.
 - (a) *Special Exception* – Wireless communication facilities covered by this Section require the approval of a special exception in accordance with the applicable provisions of Article 15 of this Chapter.

- (b) *Additional Findings Required* – The following additional findings must be made for the granting of a special exception:
 - (i) The location selected is necessary for the public convenience and service and cannot be supplied with equivalent public convenience on a building or structure or collocated on an existing antenna support structure; and
 - (ii) For new antenna support structures to be located in a residential zone or within 500 feet of a residential zone, it must be demonstrated that a good faith effort has been made to locate the proposed antenna support structure in a nonresidential zone more than 500 feet from the residential zone, with adequate coverage and on an isolated site with minimal visual impact.
- (c) *Independent Consultant* - The City may hire an independent consultant to review evidence submitted by the applicant, and the applicant must reimburse the City for the reasonable cost of hiring and utilizing such a consultant.

2. *Development Standards*

- (a) The maximum height of the facility, including antenna and other attachments, is 50 feet in a residential zone, or within 500 feet of a residential zone, and 199 feet in all other locations. Height must be measured vertically from the pre-disturbance ground level at the center of the support structure.
- (b) Monopoles are the preferred type of freestanding antenna support structure.
- (c) No commercial or promotional signs, banners, or similar devices or materials are permitted on antenna support structures.
- (d) The ground-mounted antenna support structure must be located and designed in a manner that is harmonious with surrounding properties, to the extent practicable. Antenna support structures must be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment. When practicable, available stealth structure design techniques must be used.
- (e) Wireless communication facilities must be located on City-owned property, if feasible.

- (f) Antenna support structures must be set back one foot (1') for every foot of height of the structure, measured from the base of the structure to each adjoining property line or right of way.
- (g) Lights are not permitted on antenna support structures unless they are required for aircraft warnings or other safety reasons, or to comply with applicable laws and regulations. If required, minimum lighting requirements must be applied, and strobe lights must be avoided unless specified by the Federal Aviation Administration or the Federal Communications Commission.
- (h) Outdoor storage of equipment or items related to the wireless communication facility is prohibited on sites with antenna support structures.
- (i) All antenna support structures erected as part of a wireless communication facility must be designed to accommodate collocation of additional wireless communication carriers. New antenna support structures of a height of 150 feet or more must be designed to accommodate collocation of a minimum of four (4) additional providers either upon initial construction or through future modification to the antenna support structure. Antenna support structures of less than 150 feet must be designed to accommodate collocation of a minimum of two (2) additional providers.
- (j) Prior to construction, each applicant must provide certification from a registered structural engineer that the structure will meet pertinent design, construction, installation, and operation standards, including but not limited to the applicable standards of the Electronics Industries Association (EIA), the Telecommunications Industry Association (TIA), ANSI, and the BOCA Code in effect at the time of the building permit application.
- (k) Upon completion of any sale or sublease of an antenna support structure, the owner of an antenna support structure must provide written notice to the City's Inspection Services Division.
- (l) The owner of a ground-mounted antenna support structure, at the owner's expense, must remove antenna support structures when a wireless communication facility is not used for wireless purposes for a period 180 days in a 12-month period. The owner of a ground-mounted antenna support structure must immediately notify the City, in writing, of nonuse or abandonment of the structure upon its cessation as a wireless communication facility. Failure to remove an abandoned or unused

ground-mounted antenna support structure will result in removal of the structure by the City at the expense of the owner.

- (m) When a ground-mounted antenna support structure is removed by an owner, said owner must apply for a demolition permit to remove the tower. A condition of the demolition permit is to restore the site to the standards required by the building code in effect at the time, at no expense to the City.

d. Equipment Enclosures Located at Ground Level Standards – Equipment enclosures located at ground level must comply with the following standards:

1. Each enclosure that contains the equipment of a single provider must not exceed 560 square feet of gross floor area and 12 feet in height; if more than one (1) provider is to be accommodated in an enclosure, a single enclosure must be constructed to accommodate the maximum number of providers that are required to collocate on the antenna support structure, up to a maximum of 1,500 square feet in area and 12 feet in height.
2. The enclosure must conform to the applicable setback standards for main structures in the zone in which the property is located; setback standards for accessory buildings and structures in Section 25.09.03 are not applicable to equipment enclosures.
3. The enclosure must be screened to provide year-round screening. This standard may be met by one (1) or a combination of the following: fencing, walls, landscaping, structures or topography which will block the view of the equipment shelter as much as practicable from any street and/or adjacent properties. In areas of high visibility, fencing may be wrought iron, masonry, or other decorative fencing material.
4. Lighting associated with equipment structures must be directed so as to minimize any negative impact of such lighting on adjacent properties.
5. When constructed as a freestanding building, the design of the enclosure must be coordinated with the design of the existing main building on the same lot or, if there is no building on the lot, with the buildings on an adjoining lot, to the extent practicable. In addition, the enclosure must be constructed of non-reflective materials.
6. When attached to an existing building, the enclosure must be designed in a manner that is harmonious with the existing building and surrounding properties.

7. The equipment enclosure must be removed at the cost of the owner when the wireless communication facility is no longer being used by a wireless communication provider. Failure to remove abandoned equipment will result in removal by the City at the expense of the owner.

e. *Waivers Permitted*

1. *Regulated Satellite Earth Station Antennas*

- (a) Any person or entity seeking to install or erect a satellite earth station antenna subject to this Section, other than an antenna specified in subsection 25.09.08.e.1.(a)(ii) below, may apply for a waiver from one (1) or more of the provisions of this Section pursuant to this subsection 25.09.08.e.1, and the Board of Appeals may grant such a waiver pursuant to applicable procedures and standards if it is shown that:
 - (i) The provision(s) of Section 25.09.08 at issue materially limit or inhibit the transmission or reception of satellite signals at the waiver applicant's property or the provision(s) at issue impose more than a minimal cost on the waiver applicant; and
 - (ii) The waiver, if granted, would not result in any noncompliance with applicable laws, regulations, and codes (including, but not limited to, safety and building codes); and
 - (iii) The waiver sought is the minimum waiver necessary to permit the reception or transmission of satellite signals at the waiver applicant's property.
- (b) The Board of Appeals is authorized to grant a complete or partial waiver to any provision of this Section 25.09.08. In addition, the Board of Appeals may impose a lesser requirement instead of granting a complete waiver of any provision in this Section if a complete waiver is not necessary to permit reception or transmission of amateur service communications at the waiver applicant's property, and the lesser requirement will allow the reception or transmission of satellite signals. The Board of Approval shall not condition a waiver upon an applicant's expenditure of a sum of money, including costs required to screen, pole-mount, or otherwise specially install a satellite earth station antenna, over and above the aggregate purchase or total lease cost of the equipment as normally installed, if such sum would be greater than the aggregate purchase or total lease cost of the equipment as normally installed.

2. *Wireless Communication Facilities for Amateur Service Communications*

- (a) Any person or entity seeking to install or erect a wireless communication facility in the City for the purpose of engaging in amateur radio communications may apply for a waiver from one (1) or more of the provisions of this Section pursuant to this subsection 25.09.08.e.2 and the Board of Appeals may grant such a waiver pursuant to applicable procedures and standards if it is shown that:
 - (i) The provision(s) of Section 25.09.08 at issue preclude amateur service communications, do not reasonably accommodate amateur service communications at the waiver applicant's property or do not constitute the minimum practicable regulation to accomplish the City's health, safety, and welfare objectives; and
 - (ii) The waiver, if granted, would not result in any noncompliance with applicable laws, regulations and codes (including, but not limited to, FCC regulations concerning amateur radio transmission and reception); and
 - (iii) The waiver sought is the minimum waiver necessary to reasonably accommodate amateur service communications at the waiver applicant's property.
 - (b) The Board of Appeals is authorized to grant a complete or partial waiver to any provision of Section 25.09.08. In addition, the Board of Appeals may impose a lesser requirement instead of granting a complete waiver of any provision in this Section if a complete waiver is not necessary to permit reception or transmission of amateur service communications at the waiver applicant's property, and the lesser requirement:
 - (i) Will not preclude amateur service communications; and
 - (ii) Is the minimum practicable regulation to accomplish the City's health, safety, and aesthetic objectives.
 - (c) In determining whether to grant a complete or partial waiver of any provision in Section 25.09.08 or to impose a lesser requirement, the Board must reasonably accommodate amateur radio communications.
3. *All Other Wireless Communication Facilities*
- (a) The Board of Appeals is authorized to grant a waiver from any and all of the standards of this Section 25.09.08, except for the height restrictions for a freestanding antenna support structure in subsection c. of this Section, upon showing that compliance with this Section would impose an undue

hardship or prohibit or have the effect of prohibiting the provision of wireless communication services or would result in unreasonable discrimination among providers of functionally equivalent wireless communication services.

- (b) Waiver requests from the height restrictions (subsection 25.09.08.c.2) for a freestanding antenna support structure may be granted by the Mayor and Council upon showing that compliance with this Section would impose an undue hardship or prohibit or have the effect of prohibiting the provision of wireless communication services or would result in unreasonable discrimination among providers of functionally equivalent wireless communication services. When requesting a height waiver under this provision, the applicant must submit evidence to the Mayor and Council that the height requested for the freestanding antenna support structure is the minimum height necessary to provide adequate coverage for the area that is being served by the structure. The Mayor and Council, in reviewing any waiver request from this Section, must also consider the impact that the increased height of the antenna support structure would have on properties in the area surrounding the proposed structure, including, but not limited to, the visibility of the structure from residences and proposed methods of mitigating the visibility of the structure.
- (c) This subsection 25.09.08.e.3 does not apply to antennas and wireless communication facilities specified in subsections 25.09.08.e.1 and 2.

4. *Procedures for All Waivers*

- (a) Unless the Mayor and Council adopt by resolution different procedures for processing waivers from the height restrictions contained in subsection 25.09.08.e.3, all waivers of this Section must be processed in accordance with the procedures applicable to variances contained in Section 25.06.03 of this Chapter.
- (b) A waiver applicant must provide supporting evidence and all information requested by the City. The City may hire an independent consultant to review such evidence, and the applicant must reimburse the City for the reasonable cost of hiring and utilizing such a consultant.